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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

SEAN LAVOY CASEY,

Defendant and Appellant.

B251632

(Los Angeles County
Super. Ct. No. PA047559)

APPEAL from a judgment of the Superior Court of Los Angeles County, David Walgren, Judge. Reversed.

Kevin Smith, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Steven D. Matthews and Timothy M. Weiner, Deputy Attorneys General, for Plaintiff and Respondent.

Appellant Sean Casey appeals from the execution of a suspended sentence following a finding that he had violated his probation. In light of the fact that Casey's probationary period had expired before the events that formed the basis for the finding of a violation, we reverse and order Casey's probation discharged.

FACTUAL AND PROCEDURAL BACKGROUND

Casey was convicted of robbery (Pen. Code, § 211) on June 19, 2006, based on a plea agreement. He was sentenced on July 19, 2006, to four years in prison; execution of the sentence was suspended and he was placed on five years of formal probation.

Probation was summarily revoked on July 8, 2009, after Casey was arrested for a violation of Health & Safety Code section 11359. On December 10, 2009, he admitted a violation for failure to report to his probation officer, and his probation was reinstated. On September 1, 2010, Casey's probation was again summarily revoked; on November 2, 2010, probation was reinstated without a finding of a probation violation.

Casey was arrested again on December 28, 2010 for a violation of Vehicle Code section 2800.2(a). His probation was summarily revoked on March 23, 2011, based on the report of that arrest, and a bench warrant issued. A bench warrant hearing took place on January 8, 2013, after Casey's arrest on December 23, 2012, for a violation of Penal Code section 69, the arrest that led to the imposition of sentence before us. The court never held a hearing on the violation that formed the basis for the summary revocation on March 23, 2011.

The court did hold a revocation hearing, based on the 2012 events, on July 23 and August 16, 2013. Following the hearing, the court revoked probation and imposed the suspended prison term, finding Casey in violation for failure to obey all laws. The underlying charge was dismissed, and a concurrent one year sentence for an unrelated misdemeanor charge was imposed; that charge did not form a basis for the probation violation.

Casey appealed to this court, asserting that his probationary term had expired prior to the events forming the basis for the violation. We agree.¹

DISCUSSION

Casey's five year probation period, imposed on July 19, 2006, was scheduled to expire on July 18, 2011. As set forth above, his probation was summarily revoked three times, and reinstated twice. The first time, probation was suspended for five months in 2009, and reinstated after a finding of violation. The second time, in 2010, no violation was found, and probation was reinstated after two months. The final revocation, in March 2011, was based on an arrest, but was never adjudicated. Instead, the court found a violation based on events in December, 2012.

Casey argues that his probationary period was extended once, by five months, based in the violation in 2009, and that his probationary period ended as a result in December, 2011. Respondent argues that the period was also extended by the 2010 revocation, meaning the probation extended through February, 2012. By either account, Casey's probationary period had expired long before December, 2012.

The law on this matter was settled by the California Supreme Court in *People v. Leiva* (2013) 56 Cal.4th 498. The question before the court in that case, as it is here, was whether a court can find a violation of probation, and then reinstate or terminate probation, based on events that occurred after the probationary period expired: the Supreme Court held it could not. (*Id.* at p. 502.)

Agreeing with *People v. Tapia* (2001) 91 Cal.App.4th 738, the Court held that the probationary period is extended by the period between summary revocation and adjudication only when the violation is proved. (*People v. Leiva, supra*, 56 Cal.4th at pp. 515-516.) The *Tapia* court had held that the probationary term is tolled by the

¹ The People, as respondent, conceded in their brief that the revocation and sentence should be reversed. Appellant requested an expedited hearing, which we granted with the People's consent, and immediate release. Respondent objected to release, without a statement of reasons, and we ordered release on December 9, 2014. Casey remained released on his own recognizance pending our determination of this matter.

summary revocation, and the term extended by a corresponding period, where there is proof of a violation. However, “[j]ust as the restoration of probation erases the summary revocation, so too does the failure of the court to find a violation within the period of probation.” (*People v. Tapia, supra*, 91 Cal.App.4th at p. 742.)

As a result, Casey’s probationary period expired in December, 2011, having been extended only by the admitted violation in 2009.² The court below had no jurisdictional basis to revoke probation and impose sentence based on events in December, 2012. The judgment is accordingly reversed, the order finding a violation of probation is void, and Casey is entitled to an order discharging him from probation. (*People v. Tapia, supra*, 91 Cal.App.4th p. 742.)³

DISPOSITION

The judgment is reversed, and Casey is ordered discharged from probation.

ZELON, J.

We concur:

PERLUSS, P. J.

FEUER, J.,*

² As a result of this finding, we need not address Casey’s other challenges to the finding of violation.

³ The concurrent sentence on the misdemeanor having been served, we need not address that sentence at this time.

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution